

The Senate Health and Human Services Committee offered the following substitute to SB 90:

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 12 of Title 16 of the Official Code of Georgia Annotated, relating to  
2 offenses against public health and morals, so as to enact the "Georgia Smokefree Air Act of  
3 2005"; to prohibit smoking in certain facilities and areas; to state findings; to provide for  
4 definitions; to provide for exceptions; to provide for posting of signs; to provide for  
5 violations, penalties, and state and local government enforcement and administration; to  
6 provide for construction; to provide that this prohibition shall be cumulative to other general  
7 or local acts, rules, and regulations; to repeal a former prohibition against smoking in public  
8 places; to provide for related matters; to repeal conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

**SECTION 1.**

10 This Act shall be known and may be cited as the "Georgia Smokefree Air Act of 2005."  
11

**SECTION 2.**

12 Chapter 12 of Title 16 of the Official Code of Georgia Annotated, relating to offenses against  
13 public health and morals, is amended by adding a new Article 8 to read as follows:  
14

"ARTICLE 8

15 16-12-180.

16 The General Assembly finds that:  
17

18 (1) Numerous studies have found that tobacco smoke is a major contributor to indoor air  
19 pollution, and that breathing secondhand smoke (also known as environmental tobacco  
20 smoke) is a cause of disease in healthy nonsmokers, including heart disease, stroke,  
21 respiratory disease, and lung cancer. The National Cancer Institute determined in 1999  
22 that secondhand smoke is responsible for the early deaths of up to 65,000 Americans  
23 annually;

- 1 (2) The Public Health Service's National Toxicology Program has listed secondhand  
2 smoke as a known carcinogen;
- 3 (3) Secondhand smoke is particularly hazardous to elderly people, individuals with  
4 cardiovascular disease, and individuals with impaired respiratory function, including  
5 asthmatics and those with obstructive airway disease. Children exposed to secondhand  
6 smoke have an increased risk of asthma, respiratory infections, sudden infant death  
7 syndrome, developmental abnormalities, and cancer;
- 8 (4) The federal Americans with Disabilities Act of 1990, which requires that disabled  
9 persons have access to public places and workplaces, deems impaired respiratory function  
10 to be a disability;
- 11 (5) The U.S. Surgeon General has determined that the simple separation of smokers and  
12 nonsmokers within the same air space may reduce, but does not eliminate, the exposure  
13 of nonsmokers to secondhand smoke. The Environmental Protection Agency has  
14 determined that secondhand smoke cannot be reduced to safe levels in businesses by high  
15 rates of ventilation. Air cleaners, which are only capable of filtering the particulate matter  
16 and odors in smoke, do not eliminate the known toxins in secondhand smoke;
- 17 (6) A significant amount of secondhand smoke exposure occurs in the workplace.  
18 Employees who work in smoke-filled businesses suffer a 25-50 percent higher risk of  
19 heart attack and higher rates of death from cardiovascular disease and cancer, as well as  
20 increased acute respiratory disease and measurable decrease in lung function;
- 21 (7) Smoke-filled workplaces result in higher worker absenteeism due to respiratory  
22 disease, lower productivity, higher cleaning and maintenance costs, increased health  
23 insurance rates, and increased liability claims for diseases related to exposure to  
24 secondhand smoke;
- 25 (8) Numerous economic analyses examining restaurant and hotel receipts and controlling  
26 for economic variables have shown either no difference or a positive economic impact  
27 after enactment of laws requiring workplaces to be smokefree. Creation of smokefree  
28 workplaces is sound economic policy and provides the maximum level of employee  
29 health and safety;
- 30 (9) Smoking is a potential cause of fires; cigarette and cigar burns and ash stains on  
31 merchandise and fixtures causes economic damage to businesses; and
- 32 (10) The purposes of this article are (A) to protect the public health and welfare by  
33 prohibiting smoking in public places and places of employment; and (B) to guarantee the  
34 right of nonsmokers to breathe smokefree air, and to recognize that the need to breathe  
35 smokefree air shall have priority over the desire to smoke.

1 16-12-181.

2 As used in this article, the term:

3 (1) 'Bar' means an establishment that is devoted to the serving of alcoholic beverages for  
4 consumption by guests on the premises and in which the serving of food is only  
5 incidental to the consumption of those beverages, including, but not limited to, taverns,  
6 nightclubs, cocktail lounges, and cabarets.

7 (2) 'Business' means a sole proprietorship, partnership, joint venture, corporation, or  
8 other business entity formed for profit-making purposes, including retail establishments  
9 where goods or services are sold as well as professional corporations and other entities  
10 where legal, medical, dental, engineering, architectural, or other professional services are  
11 delivered.

12 (3) 'Employee' means a person who is employed by an employer in consideration for  
13 direct or indirect monetary wages or profit, and a person who volunteers his or her  
14 services for a nonprofit entity.

15 (4) 'Employer' means a person, business, partnership, association, corporation, trust, or  
16 nonprofit entity that employs the services of one or more individuals.

17 (5) 'Enclosed area' means all space between a floor and ceiling that is enclosed on all  
18 sides by solid walls or windows, exclusive of doorways, which extend from the floor to  
19 the ceiling.

20 (6) 'Health care facility' means an office or institution providing care or treatment of  
21 diseases, whether physical, mental, or emotional, or other medical, physiological, or  
22 psychological conditions, including, but not limited to, hospitals, rehabilitation hospitals  
23 or other clinics, including weight control clinics, nursing homes, homes for the aging or  
24 chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists,  
25 physicians, dentists, and all specialists within these professions. This definition shall  
26 include all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within  
27 health care facilities.

28 (7) 'Local governing authority' means a county or municipal corporation of the state.

29 (8) 'Place of employment' means an area under the control of a public or private  
30 employer that employees normally frequent during the course of employment, including,  
31 but not limited to, work areas, employee lounges, restrooms, conference rooms, meeting  
32 rooms, classrooms, employee cafeterias, hallways, and vehicles. A private residence is  
33 not a place of employment unless it is used as a child care, adult day-care, or health care  
34 facility. This term shall not include personal vehicles used in the course of employment.

35 (9) 'Public place' means an enclosed area, or an outdoor area when specifically included,  
36 to which the public is invited or in which the public is permitted, including, but not  
37 limited to, banks, bars, educational facilities, health care facilities, laundromats, public

1 transportation facilities, reception areas, restaurants, retail food production and marketing  
 2 establishments, retail service establishments, retail stores, shopping malls, sports arenas,  
 3 theaters, and waiting rooms. A private residence is not a public place unless it is used as  
 4 a child care, adult day-care, or health care facility.

5 (10) 'Restaurant' means an eating establishment, including, but not limited to, coffee  
 6 shops, cafeterias, sandwich stands, and private and public school cafeterias, which gives  
 7 or offers for sale food to the public, guests, or employees, as well as kitchens and catering  
 8 facilities in which food is prepared on the premises for serving elsewhere. The term shall  
 9 include a bar area within the restaurant.

10 (11) 'Retail tobacco store' means a retail store utilized primarily for the sale of tobacco  
 11 products and accessories and in which the sale of other products is merely incidental.

12 (12) 'Service line' means an indoor line in which one or more persons are waiting for or  
 13 receiving service of any kind, whether or not the service involves the exchange of money.

14 (13) 'Shopping mall' means an enclosed public walkway or hall area that serves to  
 15 connect retail or professional establishments.

16 (14) 'Smoking' means inhaling, exhaling, burning, or carrying any lighted cigar,  
 17 cigarette, pipe, weed, plant, or other combustible substance in any manner or in any form.

18 (15) 'Sports arena' means sports pavilions, stadiums, gymnasiums, health spas, boxing  
 19 arenas, swimming pools, roller and ice rinks, bowling alleys, and other similar places  
 20 where members of the general public assemble to engage in physical exercise, participate  
 21 in athletic competition, or witness sports or other events.

22 16-12-182.

23 All enclosed facilities of, including buildings and vehicles owned, leased, or operated by,  
 24 the State of Georgia, its agencies and authorities, and any political subdivision of the state,  
 25 including a county, municipal corporation, or local board or authority created by general,  
 26 local, or special Act of the General Assembly or by ordinance or resolution of the  
 27 governing body of a county or municipal corporation individually or jointly with other  
 28 political subdivisions of the state, shall be subject to this article.

29 16-12-183.

30 Smoking shall be prohibited in all public places in this state, including, but not limited to,  
 31 the following places:

32 (1) Aquariums, galleries, libraries, and museums;

33 (2) Areas available to and customarily used by the general public in businesses and  
 34 nonprofit entities patronized by the public, including, but not limited to, professional  
 35 offices, banks, laundromats, hotels, and motels;

- 1 (3) Bars, including patios;
- 2 (4) Bingo facilities when a bingo game is in progress;
- 3 (5) Convention facilities;
- 4 (6) Elevators;
- 5 (7) Facilities primarily used for exhibiting a motion picture, stage, drama, lecture,
- 6 musical recital, or other similar performance;
- 7 (8) Health care facilities;
- 8 (9) Licensed child care and adult day-care facilities;
- 9 (10) Lobbies, hallways, and other common areas in apartment buildings, condominiums,
- 10 trailer parks, retirement facilities, nursing homes, and other multiple-unit residential
- 11 facilities;
- 12 (11) Polling places;
- 13 (12) Public transportation facilities, including buses and taxicabs, and ticket, boarding,
- 14 and waiting areas of public transit depots;
- 15 (13) Restaurants, including patios;
- 16 (14) Restrooms, lobbies, reception areas, hallways, and other common use areas;
- 17 (15) Retail stores;
- 18 (16) Rooms, chambers, and places of meeting or public assembly when a public meeting
- 19 is in progress;
- 20 (17) Service lines;
- 21 (18) Shopping malls; and
- 22 (19) Sports arenas, including enclosed places in outdoor arenas.

23 16-12-184.

- 24 (a) Smoking shall be prohibited in all enclosed areas within places of employment without
- 25 exception, including, but not limited to, common work areas, auditoriums, classrooms,
- 26 conference and meeting rooms, private offices, elevators, hallways, medical facilities,
- 27 cafeterias, employee lounges, stairs, restrooms, vehicles, and all other enclosed facilities.
- 28 (b) Such prohibition on smoking shall be communicated to all existing employees by July
- 29 1, 2005, and to all prospective employees upon their application for employment.

30 16-12-185.

31 Smoking shall be prohibited within a reasonable distance of 25 feet of public access main  
32 entrances, unless such area is a public roadway or is property owned by another individual  
33 or entity, outside an enclosed area where smoking is prohibited, so as to ensure that tobacco  
34 smoke does not enter the area through entrances, windows, ventilation systems, or other  
35 means.

1 16-12-186.

2 Notwithstanding any other provision of this article, the following areas shall be exempt  
3 from the provisions of Code Sections 16-12-183 and 16-12-184:

4 (1) Private residences, except when used as a licensed child care, adult day-care, or  
5 health care facility;

6 (2) Hotel and motel rooms that are rented to guests and are designated as smoking  
7 rooms; provided, however, that not more than 20 percent of rooms rented to guests in a  
8 hotel or motel may be so designated;

9 (3) Retail tobacco stores, provided that smoke from such stores does not infiltrate into  
10 areas where smoking is prohibited under the provisions of this article;

11 (4) Long-term care facilities as defined in paragraph (3) of Code Section 31-8-81;

12 (5) Outdoor areas of places of employment except those covered by the provisions of  
13 Code Section 16-12-185 and except patios of bars and restaurants as provided in Code  
14 Section 16-12-183;

15 (6) Smoking areas in international airports, as such areas are designated by the airport  
16 operator;

17 (7) Corporate offices and manufacturing facilities of tobacco manufacturers; and

18 (8) Private and semiprivate rooms in health care facilities licensed under Title 31 that are  
19 occupied by one or more persons, all of whom have written authorization by their treating  
20 physician to smoke.

21 16-12-187.

22 Notwithstanding any other provision of this article, an owner, operator, manager, or other  
23 person in control of an establishment, facility, or outdoor area may declare that entire  
24 establishment, facility, or outdoor area as a nonsmoking place. Smoking shall be prohibited  
25 in any place in which a sign conforming to the requirements of subsection (a) of Code  
26 Section 16-12-188 is posted.

27 16-12-188.

28 (a) 'No Smoking' signs or the international 'No Smoking' symbol consisting of a pictorial  
29 representation of a burning cigarette enclosed in a red circle with a red bar across it shall  
30 be clearly and conspicuously posted by the owner, operator, manager, or other person in  
31 control in every public place and place of employment where smoking is prohibited by this  
32 article.

33 (b) Every public place and place of employment where smoking is prohibited by this  
34 article shall have posted at every entrance a conspicuous sign clearly stating that smoking  
35 is prohibited.

1 (c) All ashtrays shall be removed from any area where smoking is prohibited by this article  
2 by the owner, operator, manager, or other person in control of the area.

3 (d) This Code section shall not apply to vehicles that come under this article.

4 16-12-189.

5 No person or employer shall discharge, refuse to hire, or in any manner retaliate against an  
6 employee, applicant for employment, or customer because that employee, applicant, or  
7 customer exercises any rights afforded by this article or attempts to prosecute a violation  
8 of this article.

9 16-12-190.

10 (a) This article shall be enforced by the appropriate local agency or agencies designated  
11 by each local governing authority in this state.

12 (b) Each local governing authority in this state that issues occupation tax certificates shall  
13 give notice of the provisions of this article to all recipients of occupation tax certificates.

14 (c) Any citizen who desires to register a complaint under this article may initiate  
15 enforcement with the agency designated by a local governing authority for enforcement.

16 (d) The health department and fire department of any local governing authority shall, while  
17 an establishment is undergoing otherwise mandated inspections, inspect for compliance  
18 with this article.

19 (e) An owner, manager, operator, or employee of an establishment regulated by this article  
20 shall inform persons violating this article of the appropriate provisions of this article.

21 (f) Any employee or private citizen may bring a legal action to enforce this article.

22 (g) In addition to any other remedy provided by law, a local governing authority or any  
23 person aggrieved by the failure of the owner, operator, or other person in control of a  
24 public place or place of employment to comply with the provisions of this article may  
25 apply for injunctive relief to enforce those provisions in any court of competent  
26 jurisdiction.

27 16-12-191.

28 (a) A person who smokes tobacco in any form in an area where smoking is prohibited by  
29 the provisions of this article shall be guilty of a misdemeanor and, upon conviction, shall  
30 be punished by a fine of not less than \$50.00 nor more than \$100.00.

31 (b) A person who owns, manages, operates, or otherwise controls a public place or place  
32 of employment and who fails to comply with the provisions of this article shall be guilty  
33 of a misdemeanor and, upon conviction, shall be punished as follows:

34 (1) For a first violation, a fine not exceeding \$100.00;

1 (2) For a second violation within one year, a fine not exceeding \$200.00; and

2 (3) For each additional violation within one year, a fine not exceeding \$500.00.

3 (c) In addition to the fines established by this Code section, violation of this article by a  
4 person who owns, manages, operates, or otherwise controls a public place or place of  
5 employment may result in the suspension or revocation of any permit or license issued to  
6 the person for the premises on which the violation occurred.

7 (d) Each day on which a violation of this article occurs shall be considered a separate and  
8 distinct violation.

9 16-12-192.

10 The Department of Human Resources and the agency designated by each local governing  
11 authority in this state may engage in a continuing program to explain and clarify the  
12 purposes and requirements of this article to citizens affected by it and to guide owners,  
13 operators, and managers in their compliance with it. The program may include publication  
14 of a brochure for affected businesses and individuals explaining the provisions of this  
15 article.

16 16-12-193.

17 The agency designated by each local governing authority in this state may annually request  
18 other governmental and educational agencies having facilities within the area of the local  
19 government to establish local operating procedures in cooperation and compliance with this  
20 article.

21 16-12-194.

22 This article shall not be construed to permit smoking where it is otherwise restricted by  
23 other applicable laws.

24 16-12-195.

25 This article shall be cumulative to and shall not prohibit the enactment of any other general  
26 or local laws, rules, and regulations of state or local governing authorities or local  
27 ordinances prohibiting smoking which are more restrictive than this article or are not in  
28 direct conflict with this article.

29 16-12-196.

30 This article shall be liberally construed so as to further its purposes."

**SECTION 3.**

1

2 Said chapter is further amended by repealing Code Section 16-12-2, relating to prohibited  
3 smoking in public places. This repeal shall not, however, abate the prosecution of any  
4 offense committed prior to July 1, 2005.

**SECTION 4.**

5

6 All laws and parts of laws in conflict with this Act are repealed.